IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1408 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI CHATURBHAI VASAVA
Versus
DEPUTY COLLECTOR AND OTHERS

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Appearance :
MR DN PANDYA for the
MR KL PANDYA, ASSISTANT GOVERNMENT PLEADER for Respondent Nos.1/1 and 1/2 None for Respondent(s) : 3,
MR HARIN P RAVAL for Respondent(s) : 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5,3.2.6

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 27/06/2007

ORAL JUDGMENT

1. The petitioner is before this Court being aggrieved by order passed by the Additional Secretary, Revenue Department

(Disputes), State of Gujarat, Ahmedabad dated 31.07.2004/30.09.2004 in Case No.5 of 1999. (Annexure-A to this petition).

The said revision application was filed against order of the Deputy Collector, Rajpipla bearing No.7/K/73KK/Case No.1/99 dated 15.07.1999. (Annexure-D to this petition).

2. Present petition was filed on 13.12.2004. It was then numbered in the year 2005 and that is how, it is Special Civil Application No.1408 of 2005.

One glaring fact is that the petitioner is enjoying interim relief since 04.02.2005, when this Court (Coram: Hon'ble Mr.Justice M.R.Shah) passed the following order:

> "Notice, returnable on 21st February 2005. In the meantime, the parties are directed to maintain status-quo till then."

This interim relief was then continued from time to time as the petitioner was not able to serve the respondents.

On 25.11.2005, this Court passed the following order:

> "This is a case of misplaced sympathy of the Court. The learned advocate appearing for the petitioner obtained interim relief on 04.02.2005 in the form of respondents being directed to maintain status quo, which was to operate till 21st February 2005, the returnable date of the notice. Till date, the respondents are not served as the learned advocate has not

made any sincere efforts.

The interim relief, which the petitioner is enjoying is vacated. Matter be listed only after the respondents are duly served. The order may be communicated to the respondent authorities by the Office."

3. The aforesaid order was challenged by filing Letters Patent Appeal No.169 of 2007 with Civil Application No.2086 of 2007 in Special Civil Application No.1408 of 2005. The Division Bench of this Court, consisting of (Hon'ble the Chief Justice Y.R.Meena and Hon'ble Mr.Justice Anant S.Dave) passed the following order on 30.03.2007:

"This appeal is filed against an interim order dated 25th November 2005, whereby, the learned Single Judge has vacated the order of status-quo granted earlier by the Court on 4th February 2005, on the ground that sincere efforts are not made by the petitioner to serve the respondents.

Considering these facts and after hearing the learned advocates for both the parties, we order that **status-quo be maintained for another two months**.

This appeal stands disposed of with a direction to the appellant-petitioner to cooperate for service on the respondents before the learned Single Judge and the direction given by the learned Single Judge to serve notice on the respondents be complied with immediately. If the appellant-petitioner fails to effect service on the respondents, the learned Single Judge is at liberty to pass an order vacating the order of status-quo.

Notice is discharged. Civil Application stands disposed of."

After the aforesaid order was passed on 30.03.2007, the learned Single Judge passed order on 27.04.2007, which reads as under:

> "Issue fresh notice to respondent no. 3/4 at the newly given address and fresh notice to respondent no. 3/5 for whom an affidavit has been filed by the petitioner that the said respondent has not expired, but is alive. It is also submitted by the learned counsel for the petitioner that even before LPA bench, the said respondent no. 3/5 was served with the notice and therefore, an endorsement in the Special Civil Application to the effect that respondent no. 3/5 has expired is factually incorrect. The petitioner has also filed an affidavit that the respondent no. 3/5 is alive. Therefore, fresh notice is issued to respondent no. 3/5 and it is directed to be served through Police Inspector, Rajpipla police station. Notice to respondent no. 3/4 and 3/5 returnable on 20th June, 2007. Direct service for Police Inspector, Rajpipla police station. Interim relief granted earlier to continue till further orders."

This time again, armed with interim relief, notice issued by this Court was not served and on 20.06.2007, the Court passed the following order:

> "The learned counsel Mr. Harin P Rawal submitted that he is appearing on behalf of respondent nos. 2,3/1 to 3/6. It is also submitted by Mr. Rawal that previously, ad-interim relief was granted by this Court vide order dated 4th February, 2005. Subsequently, interim relief was vacated by this Court vide order dated 25th November, 2005, against which LPA No.169 of 2007 was preferred by the petitioner. The LPA has been

dismissed of alongwith Civil Application without any change in the order dated 25th November, 2005 passed by this Court. The learned counsel for the petitioner seeks time to get further instructions. Hence, S.O. to 27th June, 2007."

4. Today when the matter is called out, Mr.Pandya, learned advocate for the petitioner submitted that he is not able to serve respondent No.3/4. Learned advocate Mr.Pandya submitted that respondent No.3/4 still remains unserved and he does not know anything additional then what is mentioned in the Board notifying this matter, wherein it is stated that, "3/2 to 3/5 unserved as not residing at the given address." The Board further mentions that, "notice for respondent No.3/4 unserved as shifted to Lunawada, Dist: Panchmahals.

The learned advocate therefore shows his inability to do anything in the matter with regard to service of notice to the respondent. His only submission is that till the notice is served through the Registry of this Court, the matter should be allowed to stand over and the interim relief, which the petitioner is enjoying, be continued, as he wants to take instructions from his client with regard to respondent No.3/4.

The Court declined the request of the learned advocate and asked him to argue the matter on merits.

5. The learned advocate for the petitioner invited attention of the Court to the orders passed by the Additional Secretary (Disputes)

and the Deputy Collector, Rajpipla. (Annexures – A and D, respectively).

The learned advocate for the petitioner submitted that the order of the Additional Secretary (Disputes) is a non-speaking order and he has not given any **cogent reasons** for passing that order.

On perusal of the order, it is found that the Additional Secretary (Disputes) has recorded that:

> "The facts of the case were taken into consideration, which are considered by the Deputy Collector in his order and he has examined the same"
>
> "The applicant has not produced any evidence with regard to the land being purchased and therefore, he has failed"
>
> "The applicant has failed to produce any evidence in support of his case that he has purchased the land in question"
>
> "The authority below has decided the matter after examining the record of the village Panchayat"
>
> "The applicant is not successful in making any effective representation against the same"
>
> "Hence, the order of the Deputy Collector is not found worth interfering. In the result, the revision application is rejected by SSRD and the order passed by the Deputy Collector, Rajpipla dated 12.07.1999 sic – 15.07.1999 is confirmed."

6. The learned advocate for the petitioner invited attention of the Court to the order passed by the Deputy Collector, Rajpipla dated

15.07.1999. The Deputy Collector has taken into consideration the facts of the case in detail, which are set out in the order itself. The Deputy Collector has recorded in terms that:

> "The record produced along with written reply by the transferor Surjibhai Puniyabhai Vasava and by the transferee Maganbhai Chaturbhai, along with record is taken in to consideration. On perusal of 7/12 record, in 1976-77, 1994-95 and 1998-99, names of Kalambhai Puniyabhai and Surjibhai Puniyabhai are shown as the occupants and the agriculturists. That being so, the so called possession of the transferee Maganbhai Chaturbhai is illegal. It is the case that the land was purchased on 07.06.1971, but no evidence regarding sale transaction is produced and therefore, the sale transaction is not proved. Since the possession is illegal, there is a breach of Section 73AA of the Bombay Land Revenue Code, 1879 and therefore, order is passed to remove the transferee Maganbhai Chaturbhai by summary procedure and the land be handed over to the land owner Surjibhai Puniyabhai and Kalambhai Puniyabhai."

7. The learned advocate for the petitioner submitted that the transferee is in possession of the land by virtue of a document which is produced at Annexure-B.

It is surprising that an argument of this nature is coming forth from a senior advocate like Mr.Pandya. Annexure-B is a, 'Banakhat', i.e. 'Agreement to Sale', that too of an additional sale and it is dated 20.12.1979. That shows that the theory put forward before the authorities that he purchased this land on 07.06.1971 is falsified by

his own document on which he is relying upon.

8. The learned advocate for the petitioner relied upon the following decisions of this Court in support of his case:

I. **DEVSHANKAR AMBALAL JANI VS. STATE OF GUJARAT AND OTHERS**, 1997 (1) GLR 279.

II. **PATEL PUNJABHAI JETHABHAI VS. STATE OF GUJARAT AND OTHERS**, 2006 (1) GLR 199.

III. **RANJITSINH P. VASAVA AND OTHERS VS. SECRETARY, REVENUE DEPARTMENT AND ANOTHER**, 2001 (1) GLH 229.

IV. **VASANJIBHAI GOKALBHAI PATEL VS. DY. COLLECTOR, SONGADH AND ANOTHER**, 1998 (3) GLR 2139.

In the opinion of this Court, the aforesaid decisions have no application to the facts of the present case. The facts before this Court in the aforesaid cases were different then the facts of the case on hand.

9. In view of the aforesaid discussion, the Court finds no substance in the petition and it is dismissed. Notice is discharged with no order as to costs. Interim relief is vacated forthwith.

10. At this juncture, learned advocate for the petitioner requested that the interim relief granted earlier be continued for some time so as to enable the petitioner to take recourse to the remedy available

under the law.

Having found no substance in the petition and looking to chequered history of the case, more particularly the conduct of the petitioner, whereby after obtaining interim relief in the year 2005, he has not served the respondent till 2007, the request of the learned advocate for the petitioner is rejected.

11. Office is directed to communicate this judgment and order to the respondent authorities.

(RAVI R.TRIPATHI, J.)

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